

**Work Session
November 4, 2003**

The Montgomery County Board of Commissioners met in a work session on Tuesday, November 4, 2003 at 4:00 p.m. in the Commissioners Conference Room. A full board was present. Chairman Maness called the meeting to order and the following was heard:

Discussion of the Haltiwanger Retreat

Dr. Al Haltiwanger presented the following information to the board regarding Haltiwanger Retreat:

“First, I would like to thank you for the invitation to meet with you and the opportunity to review the lease agreement for the Beth Haltiwanger Retreat Center. I understand that this is only one item on your busy agenda and my presentation will be brief with the opportunity and encouragement for you to ask questions.

Each of you has a copy of the lease agreed upon in August of the year 1989 by Montgomery County owner and lessor and Pfeiffer College as the lessee.

On the items of concern will be addressed. If there are other issues that need clarification or discussion, please say so.

Please look at the paragraph on the cover page that is identified as number 1 and the work TERM. 1) the original lease was for ten years 2) thereafter the lease is automatically renewed on a year to year basis and can be cancelled only by the lessee (Pfeiffer College). In essence this creates a perpetual lease without the intent of doing so and without the proper language necessary to make the provisions this or any lease to continue indefinitely.

The next paragraph identified as number 2 deals with RENTAL and states that the rent is \$10.00 per year.

Please flip over to page 3 and paragraph 14 that deals with the OPERATION of FACILITIES.

- 1) this provides the establishment of an Advisory Committee that will provide advise and council to the lessee (Pfeiffer).
- 2) an Advisory Committee also has a responsibility to advise the lessor (Montgomery County) regarding the operation of the Retreat.
- 3) it is unclear in the lease as to whether there are to be two Advisory Committees each of which will be appointed by the lessor and the lessee. This would create separate responsibilities as outlined in the lease.
- 4) the bottom line is that the terms of the lease require that at least one and possibly two Advisory Committees be appointed.
- 5) it should be noted that this Advisory Committee has no authority other than to report and give counsel.

There are some of the things that the lease says. There are some rather significant things that it does not say. It does not require any accountability for use of facility (other than it is to be used as a Retreat) or how the revenue generated from fees charged for use of the facility are used.

The following information as it pertains to the agreed upon by Montgomery County and Pfeiffer College for the use of the Beth Haltiwanger Retreat Center comes from opinions expressed based on the statutes of North Carolina by Attorney Brent Neal with the first of Kitchin, Neal, Webb, Webb & Futrell and also Michelle McPherson of the Consumer Protection Division and the State of North Carolina Department of Justice.

Property owned by the State can not be leased at less than fair market value if it is being operated for a profit.

Fair market value for a lease agreement may be either in the form of a monetary consideration or public services that would represent a fair market value. The Department of Administration of the State of North Carolina must determine such a transaction for public service.

The lessee has not complied with either of these requirements of State law with a ten dollar a year rent payment or public service.

A second issue is the continuous nature of the lease which in effect makes the lease to be in perpetuity. For a lease to continue indefinitely it is necessary for this to be the intent when the lease was entered into and must contain such language as “forever” for all times,” and “perpetuity.” Otherwise the court will state that this lease is simply for the initial term plus one renewal or something similar. These opinions are set forth in the Supreme Court case of Lattimore v. Fisher’s Food that deals with perpetual leases.

Therefore the lease appears to be in violation of state statutes in the lessor is not being given adequate consideration for the use of the facility in either public services or money.

Also, the continuous nature of the lease appears to violate state law.

The third and last issue is that the lease requires an Advisory Committee to be in place and functioning. In a letter from Russ Hollers written to Mr. Neal in August of 2000 he stated the Advisory Board was no longer in existence but that the leesees was trying to restart this Committee which indicates that they have not been operating the facility within the terms of the lease. Whether this committee is in place I do not know but if it has not been reporting to the lessor it is not fully functional.

It should be kept in mind that this facility is owned by Montgomery County and was given as a gift at no expense to the taxpayers of this county. There are \$300,000 in grants given and paid for by the taxpayers of the State of North Carolina. This along with donations has given Montgomery County a facility that worth one half to three quarters of a million dollars. As owners of this invaluable property with all of its unlimited potential it would appear that there is responsibility that comes with ownership."

Commissioner Corbett said there is still an advisory committee isn't there? Chairman Maness said I am not sure. Mr. Matthews said Judy Stevens did serve on it.

Commissioner Bostic said that he served on the committee at one point. He said I thought the leadership class was still using it? He said I think Pfeiffer is doing a good job.

Chairman Maness asked how did Montgomery County get it? Dr. Haltiwanger explained that it was through two grants that were received and in order to receive the grant it had to be funneled through a government agency.

Mr. Hilton Cochran was present and asked what the problem is and what he was suggesting? Dr. Haltiwanger said I am not suggesting anything; I just want the board to be aware of the terms of the lease. He said it doesn't comply with state law.

Commissioner Knight said our attorney should be able to modify the lease agreement to meet state statutes.

Commissioner Bostic said the county did run it but there was some staffing problems.

Mr. Cochran said he doesn't think it is fair to have the discussion without Pfeiffer.

Dr. Haltiwanger said I am not here to get into any other discussion other than what the lease contains.

The board agreed to contact Pfeiffer regarding this and have this on the next agenda.

Sewer Operation Contract with American Water Services

Mr. Matthews said he took the suggestions the board made back to American Water Services. He said the contract was revised. He said they have changed the contract so the power bills will be billed to the county to save on their overhead.

Commissioner Bostic said I thought we addressed the overtime issue? He said I would like to delete the overtime.

Commissioner Morris said she had the same concern. She asked if this was a four year contract.

Mr. Tim Carpenter said it does need to be rewritten. He said there are things that are a part of everyday operation that happen. Chairman Maness said yes, but there could be a problem that they create to have overtime. Mr. Carpenter said I would hate for them to milk it.

Commissioner Morris asked about termination of the contract. Mr. Matthews explained.

Commissioner Morris said my problem with the contract is that the county may eventually have its own Public Works Department.

Commissioner Bostic said what if the contract is terminated? Chairman Maness said we could call Underwood to help. Mr. Carpenter said we have qualified/licensed people on our staff at Hobbs Upchurch that could come in and run the plant temporarily along with some temp. staff.

Chairman Maness asked if he is talking about water too. Mr. Carpenter said water operation gets sticky, but yes we can fill the void.

Commissioner Morris expressed her concern about those on the staff having the proper licenses. Mr. Matthews said the state requires the licensing.

There was a discussion about the number of people that were to be added.

Mr. Carpenter said the three people the contract states that will be added should only be in charge of sewer. Commissioner Corbett said I have asked him how many additional people and he said three and that should be in the minutes.

Mr. Matthews said we can add a provision that these three will be involved mainly with the sewer operations.

Commissioner Morris said she is not fully sure that we are getting our water system handled.

Mr. Carpenter said we could get proposals from other folks, but there is a time issue, the sewer will be ready before we can get through the proposal process.

Chairman Maness said in four years this contract and the water contract will come back to us anyway.

Commissioner Corbett said Carolina Water is active in the county do they do sewer? Mr. Carpenter said yes.

Commissioner Morris asked Mr. Matthews if he had contacted anyone else about contracting the sewer services? Mr. Matthews said yes, but I haven't had any luck.

Chairman Maness said is it because it is a small system? Mr. Carpenter said yes, but if Carolina Water comes in they do not have the presence that American Water Service does with the water plant, they are already there.

Chairman Maness asked Mr. Matthews if he was going to discuss the overtime issue and the three new additional people. Mr. Matthews said we will continue the negotiations. Mr. Carpenter said you could mandate that at least one be certified to operate.

Chairman Maness asked how far off is the completion of the line? Mr. Carpenter said the pump station has power there. Mr. Matthews said we are still in negotiations with Mt. Gilead, he said the ball is in their court.

Discussion of Water/Sewer Policies

Mr. Matthews said that Jo, Laura, and Robin have compiled information regarding the customers that have a tap on the new lines with no fire hydrants. Information was provided by the board regarding the number of customers on 4" lines or less in Water District I and II without fire hydrants.

Mr. Matthews said it should not cost the county but \$3100 a year if the minimum fee is waived for those who are not hooked up and who do not have a fire hydrant.

Mr. Carpenter said there are those in Emerald Shores and other developments that do not have a minimum water bill. Mrs. Morton said they have a minimum water bill if they have an active account.

Mr. Knight asked who is going to explain this to the ones whose fee is not going to be waived? Chairman Maness said Tim Carpenter will.

Mr. Carpenter said that Twin Harbor is different, they have fire hydrants because of the seasonal nature of the campground and flushing issues.

The board also discussed Black Ankle Road which has a 6" line but no fire hydrants.

Commissioner Morris said I have a problem with waiving this, we will open a can of worms.

The board discussed the public meetings that were held regarding Water District I and Water District II.

Commissioner Knight said I want to do what is fair. Chairman Maness said those with fire hydrants can't say anything because they have a fire hydrant.

Mr. Carpenter reminded the board of the county who did not enforce payment of the minimum and they got into a serious fiscal situation. He said if you waive fees for those not using of 4" lines or less, that will not be a hard hit.

Commissioner Knight said I do not want to be unfair. I don't want to have to deal with this because I don't know what the answer will be. Somebody needs to be able to explain, I can't.

Mr. Carpenter said you do have a new debt service that will be there for years.

Mr. Matthews said another option is a lower minimum payment.

Mr. Carpenter suggested a fee for making inactive.

Chairman Maness asked how Montgomery County compares with other counties' rates? Mr. Carpenter said Montgomery County has low rates compared to others.

Commissioner Bostic said we are here to serve, not to make money. He said service is what the governing body is about without trying to gouge people.

Mr. Carpenter said I know it is going to sound like I am fishing, but I could do a capital management plan and rate analysis. Chairman Maness said it would be a road map for the future. Mr. Carpenter said if you are interested we can do it. Chairman Maness said, get with Mr. Matthews.

Commissioner Bostic said a lot of counties do not have the resources we have. He said we lack in some areas, but we do have water as a resource.

Commissioner Knight asked Mr. Matthews how much he said we would lose a year? Mr. Matthews said \$3100.

Commissioner Morris said a lot of these people would have signed up anyway to help their neighbors.

Commissioner Corbett asked if there would be a fee for those whose fee was waived? There shouldn't be.

Mrs. Morton said when their account is closed out, their deposit fee will be applied, if in the future they want to get water, they will have to repay the deposit fee. Commissioner Corbett asked why can't we hold their deposit fees? Mrs. Morton said it is a software issue. Mr. Corbett said they have already paid the \$75 to hook on. Mr. Matthews and Mrs. Morton said that was the tap fee. They will have to repay the deposit fee.

Commissioner Bostic said you talk about what is fair, he said we have people with bad water and money in reserve.

The board discussed waiving the minimum fee for 4" lines or less in Water District I and Water District II and Black Ankle that have no fire hydrants.

The board agreed to carry this forward to regular session.

Commissioner Corbett said he would like to continue to pay his because he feels like it is a conflict of interest because he is voting on the issue.

Proposed Landfill Study Committee

Mr. Matthews presented the following names:

- Eddie Coleman, Sr.
- Patrick Curry
- Sam Johnson
- Larry Mabry (Mr. Matthews said he hasn't been able to reach him)
- Nancy Ruppert
- Becky Stegall
- Bruce Turner
- Teng Vang (Mr. Matthews said he hasn't been able to reach him)

Mr. Matthews said I will be involved and at the meetings, but I am not sure if I will be a full member. He said he spoke with Becky Williams, Mayor of Candor about serving on the committee and she said she did not want to; however, the mayors had a meeting and voted that Roy Maness be their representative.

Chairman Maness asked the board if they wanted to vote of the committee now, or wait for all members to be contacted.

The board agreed to wait.

Commissioner Bostic said I still have a problem with this committee. He said I wouldn't dare ask anyone to serve on it. He said I was on the committee years ago who discussed the one high school, he said I still have people that will not talk to me. He said we will be pitting neighbor against neighbor.

Commissioner Morris said the committee will gather information only. Commissioner Bostic said I wouldn't put anyone on that committee for nothing.

Town of Troy Discussion

Mr. Matthews presented the following to the board:

ANALYSIS OF TROY TOWN HALL RENT/INCOME

TROY TOWN HALL LEASE	\$ 1,250.00
PROBATION/PAROLE RENTAL INCOME	\$ 500.00
EDC RENTAL INCOME	\$ 400.00
TRANSPORTAION RENTAL INCOME	\$ 300.00
EXPENSE OVER INCOME	\$ 50.00
NOTES	
	* We will not have to start the contract/pay rent until July 2004
	* Probation/Parole will not be able to start their lease with the County until Nov-04
	*Indirect cost savings to the County: wear and tear on the elevator relieve parking congestion around the Courthouse increased service to our water customers (drive thru window)

Commissioner Bostic asked how much the utility expense would be? Mr. Matthews said probably \$500, we are paying \$110 for Economic Development now. He said we should save some with less use of the elevator.

Chairman Maness asked Mr. Matthews to explain who would use the town hall? Mr. Matthews said Intensive Probation/Parole would use the basement; Judy Stevens would use the town manager’s office, her receptionist will be the receptionist and the four other cubicles will be county water.

Commissioner Corbett asked if any additional staff will be needed? Mr. Matthews said no additional staff is anticipated.

Chairman Maness said the expense to the county will be a couple hundred dollars correct? Mr. Matthews said yes.

Commissioner Bostic asked how is it heated? Mr. Matthews said a heat pump I think. Mr. Matthews said I believe that if it goes out, the town will have to replace it.

Commissioner Corbett asked if the county could buy it after 20 years? Mr. Matthews said 57% of the monthly payment goes toward the purchase.

Mr. Matthews said we will have to deal with some concerns the staff has.

Commissioner Corbett asked about intensive probation. Commissioner Bostic said that is all night.

Commissioner Knight said if we don’t go with this, what is the hardship? What hardship will it cause? Mr. Matthews said we will continue to operate the way we are currently. Commissioner Knight said I can understand getting the place, but not if we don’t have to. Mr. Matthews explained that this issue came up with the previous board. He said there was some concern regarding citizens having to use the stairs when the elevator was broken. Mr. Matthews said it is just like Mr. Bostic said it would be a service to our customers.

Commissioner Bostic said don’t quote me in this issue, because you know I am not in favor of this. We have more priorities. The jail is more important.

Commissioner Knight said we need to look at this longer. He said what else could be done with the \$1200. Chairman Maness said it is not going to be \$1200.

Commissioner Knight said what if they decide they don’t want. He said a whole lot can happen in 20 years. He said I just don’t want to jump up and buy something.

The board agreed to carry this issue forward.

County Manager’s Report
December Meeting

The board agreed to have the December meeting on the 9th as scheduled.

Cooperative Extension Annual Report

Mr. Matthews announced the Cooperative Extension Annual Report will be December 9 at 2:30 p.m. at the Cooperative Extension Office.

Extra Meeting in November

The board agreed to have the second meeting in November.

Mt. Gilead and Star Christmas Parades

Chairman Maness asked the board if they could all ride together. The board agreed.

2004 Holiday Schedule

Mr. Matthews presented the 2004 Holiday Schedule to the board and asked if they were going to give the county employees an extra day for Christmas like they did last year, since there wasn't going to be a dinner? The board discussed ½ day. The consensus was to carry this forward.

Veterans Parade

Mr. Matthews announced the Veterans Parade, this Saturday, November 8 at 11:00 a.m. in Troy.

Cemetery on Okeewemee Road

Mr. Matthews said John Callicutt wants to discuss the future of the cemetery on Okeewemee Road, and wants to meet with the board at the next work session.

The question was asked if the county keeps it up? Mr. Matthews said not that I know of. Commissioner Morris said Bill Hamilton has taken some people over and cleaned it up in the past. Commissioner Corbett said there is a state law that the owner of the property (cemetery) has to keep it up. Commissioner Morris said the county does own this property.

Commissioner Discussion – Full –Employee Status & Insurance

Commissioner Bostic asked if we are full fledged employees now since we have to pay taxes? Mr. Matthews said that is something the board will need to decide. The staff did not come up with this, county auditors did.

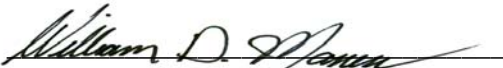
Commissioner Knight said I am going to have to do something different after the first of the year because I am on disability and I can't draw a salary. Mr. Matthews said we can sit down and discuss some options.

Commissioner Bostic asked about insurance? Mr. Matthews said again that is a decision the commissioner will have to make. You have to work at least 32 hours a month to be considered full-time.


Items Carried Forward

- Water Sewer Policies
- Purchase of Troy Town Hall

There being no further business the meeting was adjourned.


William D. Maness, Chairman




Laura B. Morton, Clerk to the Board